

**STORAGE NAME:** h0855.cpcs.doc  
**DATE:** February 15, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME PREVENTION CORRECTIONS & SAFETY  
ANALYSIS**

**BILL #:** HB 855  
**RELATING TO:** Illegal Smuggling of Aliens  
**SPONSOR(S):** Representative Barreiro

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CRIME PREVENTION CORRECTIONS & SAFETY
  - (2) SELECT COMMITTEE ON SECURITY
  - (3) COUNCIL FOR HEALTHY COMMUNITIES
  - (4)
  - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING OR MODIFYING ANY LEGISLATION OR STATUTE.

The bill creates the crimes of alien smuggling, attempted alien smuggling, and conspiracy to smuggle an alien into the state of Florida. The bill provides penalties for such crimes.

This bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

Heretofore the state of Florida has not been engaged in the investigation, arrest, prosecution and incarceration of persons engaged in alien smuggling.

B. PRESENT SITUATION:

There is currently no Florida statute under which a person can be charged with the crime of "alien smuggling" and the term smuggling is not used in Florida Statutes. There is, however, a federal statutory scheme that criminalizes the bringing of aliens to the United States. Specifically, 8 USC §1324, Bringing in and Harboring Certain Aliens, defines the following as criminal acts:

(a)(1)(A)(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or

(v) (I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts, shall be punished as provided in subparagraph (B).

C. EFFECT OF PROPOSED CHANGES:

The bill (1) defines the term "alien" as a person who is neither a resident of nor a citizen of the United States; (2) The bill provides that it is unlawful for any person to knowingly smuggle, attempt to smuggle or conspire to smuggle any alien into this state; (3) Provides a second degree felony penalty for alien smuggling, attempting alien smuggling or conspiracy to smuggle an alien; and (4) Provides a first degree felony penalty when an alien is killed in an attempt to illegally smuggle the alien into the state of Florida.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

There will be a fiscal impact on local law enforcement, state attorneys, and the courts to arrest, detain, prosecute and adjudicate persons charged under with violating the criminal act created by this bill. The extent of the fiscal impact is undeterminable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None anticipated.

D. FISCAL COMMENTS:

The bill creates offenses that are a second degree felony. The offenses are not ranked in the offense severity ranking chart of the Criminal Punishment Code and thus will default to level four (4). The permissible sentence will range from any non-state prison sentence up to 15 years in prison. It is not expected that this bill will have a significant impact on the Department of Corrections.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill was reviewed by the US Department of Justice and input was incorporated into the strike all amendment filed by the sponsor.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

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